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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,069	04/08/2004	Bill Kellogg JR.	24718.00	7220
37833	7590	05/21/2007	EXAMINER	
LITMAN LAW OFFICES, LTD.			JOYCE, WILLIAM C	
P.O. BOX 15035			ART UNIT	PAPER NUMBER
CRYSTAL CITY STATION				3682
ARLINGTON, VA 22215				
			MAIL DATE	DELIVERY MODE
			05/21/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/820,069	KELLOGG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William C. Joyce	3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

This is the First Office Action in response to the above identified patent application filed on April 8, 2004.

### ***Claim Objections***

1. Claim 7 is objected to because of the following informalities: The application contains 2 claims numbered as claim 7. The last claim must be changed to --8--. For the purpose of examination, the last claim will be treated as claim 8. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Hutchinson (USP 2,021,363).

Hutchinson discloses an auger device having an auger shaft (S), an auger tray (T), a top plate (11), and a bearing device connected to the top plate for supporting the auger, the bearing device having a U-bolt (20) having an arch and two threaded legs extending from opposite ends of the arch, the threaded legs being adapted for attachment to a bearing mounting plate; a strap (16) integrally formed with the top plate,

the strap having an upper surface and a lower surface, and having openings defined therein aligned with the threaded legs of the U-bolt, the strap being removably disposed on the threaded legs; a lubrication pad (18) attached to the lower surface of the strap; and a lubrication strip (17) attached to the arch of the U-bolt; whereby the U-bolt is attachable to the bearing mounting plate and with the lubrication strip and the lubrication pad bearing on diametrically opposite sides of a shaft.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cardwell (USP 3,112,963) or Benzon et al. (USP 3,730,332) in view of Bilderback et al. (USP 1,999,230).

Cardwell and Benzon et al. disclose an auger device having an auger shaft, an auger tray, a top plate, and a bearing device connected to the top plate for supporting the auger.

Neither Cardwell nor Benzon et al. discloses the configuration of the bearing device as having the claimed features, however it was known in the art to provide an auger bearing as claimed. Figure 1 of Bilderback et al. teaches a bearing arrangement having a U-bolt (6) having an arch and two threaded legs extending from opposite ends

of the arch, the threaded legs being adapted for attachment to a bearing mounting plate (1); a strap (2) having an upper surface and a lower surface, and having openings defined therein aligned with the threaded legs of the U-bolt, the strap being removably disposed on the threaded legs; a lubrication pad (3) attached to the lower surface of the strap; and a lubrication strip (4) attached to the arch of the U-bolt; whereby the U-bolt is attachable to the bearing mounting plate and with the lubrication strip and the lubrication pad bearing on diametrically opposite sides of a shaft.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to support the auger shaft of either one of Cardwell or Benzon et al. with the bearing device of Bilderback et al., motivation being to provide a simple and secure means for supporting the auger shaft.

With respect to claim 3, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cross sectional shape of the U-bolt since applicant has not disclosed the importance of the claimed feature and it appears the U-bolt in the prior art works equally well.

With respect to claims 4-5, It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bearing materials of self-lubricating plastics, such as PTFE, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 6, it was well known in the art to provide a spacer, such as a shim, for positioning a first machine component with respect to a second machine component.

With respect to claim 8, the prior art references do not disclose providing a second bearing device adjacent a failed bearing device, however the claim method would have been within the skill of one in the art.

Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a second bearing device adjacent a failed bearing device for supporting the auger, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. V. Bemis Co., 193 USPQ 8.

6. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cardwell (USP 3,112,963) or Benzon et al. (USP 3,730,332) in view of Japanese Reference 9-296881 (JP '881)

Cardwell and Benzon et al. disclose an auger device having an auger shaft, an auger tray, a top plate, and a bearing device connected to the top plate for supporting the auger.

JP '881 teaches a hanger device having a U-bolt (2A,22) having an arch and two threaded legs extending from opposite ends of the arch, the threaded legs being adapted for attachment to a bearing mounting plate (9,25); a strap (11,28) having an upper surface and a lower surface, and having openings defined therein aligned with the threaded legs of the U-bolt, the strap being removably disposed on the threaded

legs; a lubrication pad (10,27) attached to the lower surface of the strap; and a lubrication strip (3A,24) attached to the arch of the U-bolt; whereby the U-bolt is attachable to the bearing mounting plate and with the lubrication strip and the lubrication pad bearing on diametrically opposite sides of a shaft.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to support the auger shaft of either one of Cardwell or Benzon et al. with the hanger device of JP '881, motivation being to provide a simple and secure means for supporting the auger shaft.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the bearing device of Olsen ('235), Weiss ('969), Kozak et al. ('201), Downey ('341), and Keller et al. ('372).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Joyce whose telephone number is (571) 272-7107. The examiner can normally be reached on Monday - Thursday 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571) 272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3682

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*William C. Joyce 5/11/07*  
William C. Joyce